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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,769	03/31/2001	Anil K. Annadata	M-11527 US	6443
33031	7590	06/15/2005	EXAMINER	
CAMPBELL STEPHENSON ASCOLESE, LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			REFAI, RAMSEY	
			ART UNIT	PAPER NUMBER
			2152	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,769

Applicant(s)

ANNADATA ET AL

Examiner

Ramsey Refai

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/04/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Responsive to Amendment received November 26, 2004.

Claims 2-53 remain presented for examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 14 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14 and 33 recites the limitation "the being capable of sending". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 47 – 48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to software per se transmitted

on a carrier wave and render it non-statutory, unless implemented on a computer readable medium.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 2-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner (U.S. Patent No. 6,092,102).

7. As per claim 2, Wagner teach an apparatus for communicating using a communication channel comprising:

a configurable communication server capable of handling a communication with the communication channel by virtue of being capable of accessing information regarding the communication (**column 9, lines 9-38, element 124 in Figure 3**).

8. As per claim 3, Wagner teach an apparatus wherein

the communication is a command issued to the communication channel and the being capable of accessing the information comprises being capable of accessing information regarding the command (**column 9, lines 9-38, column 3, lines 30-56, column 4, lines 35-50; accessing information regarding the event/message**).

9. As per claim 4, Wagner teach an apparatus wherein the communication is an event received from the communication channel; and the being capable of accessing the information comprises being capable of accessing information regarding the event (**column 9, lines 9-38, column 3, lines 30-56, column 4, lines 35-50; accessing information regarding the event/message**).

10. As per claim 5, Wagner teach an apparatus comprising:
a database comprising an event record, wherein the event record comprises the information regarding the event (**column 3, lines 47-63, column 4, lines 35-67, column 9, lines 18-35, column 11, lines 32-45**).

11. As per claim 6, Wagner teach an apparatus wherein the configurable communication server is configured by performing one of adding the event record to the database, modifying the event record in the database, and deleting the event record from the database (**abstract, column 3, lines 35-64, column 4, lines 40-60**).

12. As per claim 7, Wagner teach an apparatus comprising:
at least one event handler (**column 9, lines 9-38, Figures 1-2**) and
wherein the event record comprises a name of one event handler of the at least one event handler for handling the event (**column 3, lines 47-63, column 4, lines 35-67, column 9, lines 18-35, column 11, lines 32-45**) and
the configurable communication server uses the one event handler named in the event record for handling the event (**column 9, lines 9-38**).

13. As per claim 8, Wagner teach an apparatus wherein

the database further comprises an event response record associated with the event record; and the configurable communication server is further capable of performing an event response by virtue of being capable of determining the event response by accessing the event response record associated with the event record (**column 9, lines 9-38, column 3, lines 34-64, abstract**).

14. As per claim 9, Wagner teach an apparatus wherein

the information regarding the event further comprises information regarding an event response to the event; and the configurable communication server is further capable of performing the event response (**column 9, lines 9-38, column 3, lines 34-64, abstract**).

15. As per claim 10, Wagner teach an apparatus wherein

the configurable communication server is capable of being coupled to a channel driver and the channel driver is coupled to the communication channel such that the channel driver performs the communication with the communication channel (**the use of drivers are well known in the art and are inherent when using multiple communication channels that each use different protocols. The use of drivers would free the operating system from the burden of having to understand and support the needs of individual channels. See Figures 1 and 3, column 9, lines 15-38**).

16. As per claim 11, Wagner teach an apparatus wherein

the configurable communication server is coupled to the channel driver such that the configurable communication server receives an event from the communication channel via the channel driver (**the use of drivers are well known in the art and are inherent when**

using multiple communication channels that each use different protocols. The use of drivers would free the operating system from the burden of having to understand and support the needs of individual channels. See Figures 1 and 3, column 9, lines 15-38).

17. As per claim 12, Wagner teach an apparatus comprising:
a user interface comprising a user interface object capable of providing a notification of the communication, wherein the communication corresponds to receiving an event from the communication channel **(column 6, lines 45-56, column 8, lines 8-22, column 9, lines 9-38).**

18. As per claim 13, Wagner teach an apparatus comprising:
a user interface comprising a user interface object capable of being activated, wherein the configurable communication server is capable of sending a communication to the communication channel when the user interface object is activated **(column 6, lines 45-56, column 8, lines 8-22, column 9, lines 9-52).**

19. As per claim 14, Wagner teach an apparatus wherein:
the being capable of sending the communication further comprises being capable of issuing a command to the communication channel **(column 9, lines 9-38, element 124 in Figure 3).**

20. As per claims 15-53, these claims contain similar limitations as claims 1-14 above, therefore are rejected under the same rationale.

Response to Arguments

21. Applicant's arguments with respect to claims rejected under 35 U.S.C. 103 have been considered but are moot in view of the new ground(s) of rejection.

22. Applicant's arguments with respect to claims 47-48 rejected under 35 U.S.C. 101 have been fully considered but they are not persuasive.

- Claim 47 recites “ *A signal embodied in a carrier wave comprising: instructions to perform the method of claim 15.*”
- Claim 48 recites “ *A signal embodied in a carrier wave comprising: data produced by performing the method of claim 15.*”

Applicant is arguing that claims 47-48 recite statutory subject matter however Examiner respectfully disagrees. A computer program/instructions are only statutory when tangibly embodied on a computer readable medium such as computer memory. A signal is not a tangible medium and thus is non-statutory.

In the MPEP Chapter 2106 recites :

“ ...

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (*claim to a data structure per se held nonstatutory*). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional

interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

....

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, *without the computer-readable medium* needed to realize the computer program's functionality, *as nonstatutory functional descriptive material*. When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim. See paragraph IV.B.2(b), below. When a computer program is recited in conjunction with a physical structure, such as a *computer memory*, Office personnel should treat the claim as a product claim. ...”

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Miloslavsky (U.S. Patent No. 5,915,011)
- b. Rahman (U.S. Patent No. 6,463,292)
- c. Dilip et al (U.S. Patent No. 6,704,409)
- d. Beck et al (U.S. Patent No. 6,332,154)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ramsey Refai
Examiner
Art Unit 2154

RR
June 6, 2005


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